FILE COPY

Office - Supreme Court, U.S.
FILED
FEB 24 1948

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. ~~12,~~ Original.

6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER TO PETITION FOR THE ENTRY OF A SUPPLEMENTAL DECREE, AND MEMORANDUM RELATIVE TO SAID ANSWER.

FRED N. HOWSER,
Attorney General of the State of California,

EVERETT W. MATTOON,
Deputy Attorney General,
600 State Building, Los Angeles 12, Calif.,
Counsel.

Parker & Company, Law Printers, Los Angeles. Phone TR. 5206.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.
No. 12, Original.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER TO PETITION FOR THE ENTRY OF A SUPPLEMENTAL DECREE, AND MEMORANDUM RELATIVE TO SAID ANSWER.

The State of California, by way of answer to plaintiff's petition for the entry of a supplemental decree, respectfully represents and alleges, as follows:

1. The areas described in Paragraphs 1(a), 1(b) and 1(c) of the proposed supplemental decree do not constitute segments of that area underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947; on the contrary said areas constitute inland waters of the State of California.

2. The area described in Paragraph 1(a) of the proposed supplemental decree contains numerous bays, ports and harbors which do not constitute any part of that area

underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947.

3. There is a large area lying seaward of the straight line described in Paragraph 1(b) of the proposed supplemental decree which constitutes a part of and is within the Bay of San Pedro and which does not constitute any portion of that area underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947.

4. The area described in Paragraph 1(c) of the proposed supplemental decree lies within a bay which does not constitute any part of that area underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947.

5(a) Issues of fact exist as to whether any of said areas described in Paragraphs 1(a), 1(b) and 1(c) constitute segments of that area underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947, or constitute inland waters of the State of California.

(b) If it should be found that part of said areas described in Paragraphs 1(a), 1(b) and 1(c) are within the inland waters of the State and part are within the area underlying the Pacific Ocean described in Paragraph 1 of the Decree of October 27, 1947, issues of fact will exist as to what portions thereof are within said inland waters, and as to the existence and location of the various bays, harbors, ports and river mouths that are claimed by California to exist therein.

(c) Issues of fact also exist as to the location of the ordinary low-water mark of the Pacific Ocean, as referred to in each of Paragraphs 1(a), 1(b) and 1(c) of the proposed supplemental decree.

6. Numerous municipalities, corporations and individuals are in physical possession, under claim of right as grantees, lessees or licensees of the State of California, of large portions of the areas described in Paragraphs 1(a), 1(b) and 1(c) of the proposed supplemental decree, and said municipalities, corporations and individuals are indispensable parties to this proceeding and will be deprived of their constitutional rights if a decree is entered in this case which determines that any portion of the lands in the possession of said parties is outside the inland waters of California without affording such parties the constitutional right to a day in court and to be heard in defense of their property rights.

7. The Court decree of October 27 applies to the entire coast line of California. Urgent necessity exists for fixing the entire line dividing the area underlying the Pacific Ocean described in the Court decree of October 27, 1947, from that belonging to California and its grantees, lessees and successors in interest.

WHEREFORE, defendant State of California respectfully prays:

1. That a master in chancery be appointed to hold hearings and take evidence and make findings of fact and

conclusions of law (subject to review by this Court) (a) as to whether any of said areas described in Paragraphs 1(a), 1(b) and 1(c) of plaintiff's petition constitute segments of that area underlying the Pacific Ocean described in Paragraph 1 of the decree of this Court entered on October 27, 1947, and if it be found that any portion of said areas constitute segments of said last mentioned area, (b) as to the location and extent thereof, (c) as to the location and extent of all bays, harbors, ports and river mouths situated within the areas described in Paragraphs 1(a), 1(b) and 1(c) of plaintiff's petition, and (d) as to the location of the line of "ordinary low-water mark" along the "open coast" if it be found that any part of the area described in Paragraphs 1(a), 1(b) and 1(c) of plaintiff's petition lies along the "open coast."

That said master in chancery be instructed to hold hearings and take evidence and make findings of fact and conclusions of law as to the line along the entire coast of California which divides the area underlying the Pacific Ocean described in Paragraph 1 of the Court decree of October 27, 1947, from the inland waters, ports, bays and harbors of California.

2. That all municipalities, corporations and individuals now in possession, under grants, leases or permits of the State of California, of any portion of the areas described in Paragraphs 1(a), 1(b) and 1(c) of the proposed supplemental decree be made parties to this proceeding and be given an opportunity to be heard herein.

Memorandum Relative to Answer to Petition for Supplemental Decree.

It is respectfully submitted that the petition of plaintiff for a supplemental decree presents numerous factual issues which cannot be determined without the presentation of evidence.

The purpose of plaintiff's petition is (p. 6) " 'to determine with greater definiteness particular segments of the boundary' of the area claimed by the United States." Plaintiff states that there are numerous oil and gas wells now in operation which are immediately adjacent to the submerged lands described in plaintiff's proposed supplemental decree and that it is necessary to *identify* the wells "which are situated within the area subject to the paramount rights and powers of the United States." (p. 6.) We desire to call attention to the fact that, even if the supplemental decree *as now proposed* were actually entered, it would be impossible to identify the wells which are within the area subject to the paramount rights of the United States.

Oil and gas wells are now in operation both seaward and landward "of the ordinary low-water mark." The oil pools in these three areas extend both under the land and under the sea. What plaintiff desires to ascertain is which of the various wells which draw from these pools are bottomed seaward of the line of ordinary low-water mark and outside inland waters (including bays, ports and harbors). With the wells bottomed landward of this line plaintiff has no concern. The fact is, of course, that

many wells are bottomed very close to this line, some on one side, some on the other. Under California law state leases have been made of submerged lands seaward of the line of *mean high tide*. Many wells are bottomed in the strip between the line of mean high tide and the ordinary low-water mark which, on some parts of the coast, is a strip of substantial width. The decree as proposed by plaintiff would not enable plaintiff to identify the location of a single well.

The line of *mean high tide* constitutes the boundary line between privately or municipally-owned upland and State-owned tideland. In most cases along the coast where there is property of any value this line has been surveyed and located upon the ground. In a number of instances it has been fixed by judicial decree. (See *Borax Consolidated v. Los Angeles,* 296 U. S. 10.) However, the line of *"ordinary low-water"* of the Pacific Ocean has never before been considered, either by State or Federal officers, as a line which divided either property rights or the limits of the jurisdiction or power of the State and Federal Governments; hence, there has never been any occasion to survey this line and its location is unknown and undefined.[1]

Plaintiff states in the footnote (p. 7) that the lines described in the proposed supplemental decree are not precise surveyor's lines but "they are sufficiently definite to

---

[1]There are a few states where, *under state law,* private land holdings extend to low-water mark. In such cases, the line has usually been defined by statute, or court decision and in some instances fixed by actual survey. But even in these states there is no way of knowing whether the low-water mark fixed by state law is the same as the "ordinary low-water" mark referred to in the Court decree of October 27, 1947.

permit the drawing of such lines when the occasion demands." We respectfully challenge the correctness of this statement. The line of ordinary low water is a constantly changing line. No surveyor could carry the proposed decree into effect until he knows *as of what date* the line of ordinary low-water mark is to be determined. That is a question of law. After the date is fixed he would have to know to what extent the line had been changed by artificial means or by natural accretions or erosion and what effect is to be given to such changes. These are questions of mixed law and fact which should properly be considered by a master in chancery.

Furthermore, it is not known what is meant by the term "ordinary low-water mark." It has no presently fixed legal meaning. No survey of such a line could be made until it is determined what is meant by this term. There are several possible interpretations. It could refer either to the mean of all the low waters or the mean only of the lower or extreme low waters. On some portions of the coast there is a substantial difference between these lines.

After it is determined what line is to be used, it is necessary to know what the range of the tide is at the particular location in question. This involves a series of daily tidal readings. Tides vary from day to day and from month to month. The "low-water mark" would be ascertained by taking an average of the tide readings over a period of time long enough to ascertain the correct mean (see *Borax Consolidated v. Los Angeles*, 296 U. S. 10, 26), and then locating this "mark" upon the ground by a survey.

Plaintiff is asking the Court to fix a property line—*i. e.*, a line that will form the boundary line of property of

enormous value which plaintiff admits *belongs* to the State or its successors and lessees. (Petition, p. 10.) To decree simply that this line is the line of "ordinary low-water mark" does not identify it. No one could act upon such a decree. To be of any use to either party the line must be fixed in the Court's decree. The Court must determine *where* the line of ordinary low-water mark actually exists on the ground and *describe this line in its decree.* Until this is done the parties will never know and will never be able to determine which of the some 300 oil wells operating in the tide or submerged lands are bottomed seaward of the "ordinary low-water mark."

What has been said with regard to the low-water mark applies equally to the bays, harbors, ports, river mouths and inland waters. The decree as proposed would not identify the line separating these areas from the "open sea," and until such line is actually identified on the ground and *embodied in the Court's decree* no one can tell whether an oil well is bottomed on one side or the other of such a line. No marshall could enforce a decree enjoining the operation of oil wells bottomed outside of a line "crossing, from headland to headland, the mouths of all bays, sloughs, lagoons, rivers and other streams entering the Pacific Ocean between such points." The headlands must first be located and it must first be determined what constitute the bays, ports, harbors, river mouths, etc. And it must be determined how far apart these headlands are and between what particular point on the headlands the line is to be drawn. To determine these matters factual evidence, physical, geographical and historical, is necessary.

Plaintiff states (p. 7) that the only apparent basis of California's claim adverse to the rights of the United

States in the area described in Paragraph 1(a) is the existence of a "channel" which lies between the islands off the coast (which islands are within the State of California) and the mainland. It is true that California claims that this channel constitutes inland waters and desires to present evidence, both geographical and historical, in support of that claim. But plaintiff is mistaken in thinking that this is the only basis California has for a claim in this area. California claims that along the coast line from Point Conception to Point Hueneme there are numerous bays, harbors and ports which are not in the open sea. In this connection we respectfully call attention to the fact that the map of the coast line (Appendix A) submitted with plaintiff's petition is wholly misleading and erroneous in that it is on such a small scale that it fails to show the existence and location of said bays, harbors, ports and inland waters, and California desires the opportunity to present factual evidence with regard thereto.

It is also true that the area described in Paragraph 1(c) lies between various islands (Santa Catalina and San Clemente, which are part of the State of California) and the mainland, and constitutes what is known as the San Pedro or Catalina Channel. California desires to present evidence as to the physical and historical facts relating to this channel.

California also claims that the area properly included in San Pedro Bay is much greater than that described in Paragraph 1(b) (it was so held by the Federal District Court in *United State v. Carrillo,* 13 F. Supp. 121) and that San Pedro Bay includes all or nearly all of the area described in Paragraph 1(c) of the proposed decree. Cali-

fornia desires to present evidence, both factual and historical, in support of this claim.

We desire further to say that we are completely at a loss to understand the attitude of the Attorney General of the United States with regard to the rights of the grantees and lessees of the State who are now in actual possession and who have made extensive improvements upon the areas described in the proposed supplemental decree.

In its memorandum (pp. 9 and 10) plaintiff states that the purpose of the present petition and proposed decree is to initiate proceedings "under which the boundaries between certain segments subject to the dominion and paramount rights of the United States and adjacent areas belonging to the State of California, its agents, successors, assigns or lessees may be ascertained *and made binding* on all parties in interest." In other words, plaintiff apparently seeks an adjudication of the boundary of areas which admittedly *belong* to the successors and lessees of California and which will be binding upon them in a proceeding to which they are not parties and in which, unless they are brought in by order of the Court, their property rights may be taken from them without due process of law; indeed, without any process of law and without ever having a day in court.

The names of all these parties are known to plaintiff. They are set forth in defendant's answer. The municipalities included within the specific areas described in the proposed supplemental decree include the Cities of Santa

Barbara, Carpinteria, Ventura, Los Angeles, Long Beach, Newport Beach and Avalon, Catalina Island (See map opposite p. 144, Brief of State of California in Opposition to Motion for Judgment.) These municipalities are all grantees of the State of all submerged lands within their respective limits and extending oceanward three miles, except in the case of Santa Barbara, where the grant extends one-half mile.

Since the decision of the Court in this case California has supplied the United States with photostatic copies of all leases, both for oil and gas, and also for kelp, and also of all other permits and licenses issued by the State of California in lands below mean high tide and now in effect.

It is respectfully suggested, in connection with the appointment of a master in chancery, that the parties be given an opportunity to determine whether they can agree on a list of five or six names which would be satisfactory to both parties, from which an appointment might be made if agreeable to the Court.

The State of California can see no reason why plaintiff limited its petition to the three small strips of coast described. The decree of the Court applies to the entire coast line from Mexico to Oregon. This decree creates a cloud upon the title on all land in California which fronts upon the Pacific Ocean or upon any of the waters which are not definitely known to be inland waters. The State and its municipalities and the property owners along the coast line cannot make improvements or in any way

deal with their property until this line of demarcation is fixed. It is respectfully urged that the entire line from Mexico to Oregon be fixed in the proceeding now before the Court.

Respectfully submitted,

FRED N. HOWSER,
Attorney General of the State of California,

EVERETT W. MATTOON,
Deputy Attorney General,
Counsel.